IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 859 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

LARSEN AND TOUBRO LTD.

Versus

ASHOK JETHWA SECTION OFFICER

Appearance:

1. Special Civil Application No. 859 of 2002

MR KEYUR GANDHI for NANAVATI ASSOCIATES for Petitioner

MS SONAL D VYAS AGP for Respondent No. 1-3

MR NR SHAHANI for Respondent No. 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/05/2002

ORAL JUDGEMENT

1. RULE. The learned Assistant Government Pleader Ms.Vyas for respondents Nos.1 to 3 and the learned counsel Mr.Shahani for respondent No.4 waive service.

2. The petitioner herein has, under Articles 226 and 227 of the Constitution, challenged the order by which the industrial dispute has been referred by the appropriate government. It is the case of the petitioner that, while referring the dispute on the basis of the representations of the respondent No.4, the appropriate government has taken into consideration the claim of the respondent that there was lock-out in the industry of the petitioner for the period from 30.9.1998 to 30.10.1998. However, as contended by the petitioner, the officers concerned of the appropriate government were apprised of the fact that, according to the petitioner, the workmen led by the respondent No.4, had gone on strike. The only grievance made on that basis is that the impugned order of reference was not fully reflecting the rival contentions of the parties and it might be difficult for the petitioner to lead evidence before the Industrial Tribunal to which the reference is made as far as the petitioner's case of strike was concerned. It was submitted by the learned counsel Mr. Shahani appearing for the respondent No.4 that the petitioner had in fact not participated in the conciliation proceedings when the appropriate government was seized of the matter and, had the petitioner made out a case of strike by any workman, they would have immediately joined duty and resolved the dispute. It was further submitted that, after the impugned order of reference made in April 2000, the filing of the present petition after two years was merely an attempt at delaying the proceedings of the Tribunal. It was also fairly conceded that in case it was absolutely necessary for the petitioner to establish any case of strike before the Tribunal which is seized of the matter, the respondent-union will not take any objection to leading of any such evidence as part of the defence of the petitioner.

3. After considering the submissions shortly summarised as above, it would appear that the petitioner has not even made any demand for referring any dispute or for amendment of the existing terms of reference. It was, therefore, submitted on behalf of the petitioner that they may be permitted to make appropriate representation before the respondents Nos.1 to 3 so as to seek amendment of the impugned order of reference so that it may reflect the petitioner's version also. Obviously, there cannot be any objection to the petitioner making such representation and the appropriate government considering the same in accordance with law. The learned Assistant Government pleader for respondents Nos.1 to 3 submitted that as and when such representation is made,

the same shall be considered and, as early as may be, appropriate order shall be passed, if need be, after hearing respondent No.4, within a period of two months. The learned counsel Mr.Shahani fairly conceded that while the aforesaid exercise is carried on, the parties will not proceed with the reference pending before the Tribunal upto 15.7.2002.

4. Accordingly, the petition is partly allowed and the petitioner is directed to make appropriate representation before the respondents Nos.1 to 4 along with the documents submitted earlier and other relevant documents, if any, for the purpose of amendment of or issuance of a corrigendum to the impugned order of reference and the appropriate government is directed to make appropriate order in exercise of its powers under sub-section (1) and sub-section (4) of section 10 of the Act within a period of two months from today. Rule is made absolute accordingly with no order as to costs. Direct service to the learned Assistant Government Pleader and Direct Service to the other respondents permitted.

Sd/-
(D.H.Waghela, J.)

09.5.2002
(KMG Thilake)